

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ARNOLD HOFFMAN,

Plaintiff

v.

Civil No. 04-160-P-C

APPLICATORS SALES & SERVICE, *et al.*,

Defendants

Gene Carter, Senior District Judge

**ORDER GRANTING DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S
DESIGNATION OF EXPERT WITNESS**

Now before the Court is Defendants' Motion to Strike Plaintiff's Designation of Expert Witness (Docket Item No. 11). Plaintiff opposes the Motion (Docket Item No. 27). For the reasons set forth below, the Court will grant Defendants' Motion.

The Court issued its Scheduling Order (Docket Item No. 4) in this matter on July 23, 2004. Contained in the Scheduling Order are several deadlines, including an October 8, 2004, deadline for Plaintiff to "designate experts required to be disclosed by Fed. R. Civ. P. 26(a)(2)(A) ... and, with respect to each of them, provide a complete statement of all opinions to be expressed and the basis and reasons therefore." Scheduling Order at 2. Plaintiff did not object to the Scheduling Order and has at no time filed a motion to amend the Scheduling Order.

On December 27, 2004, counsel for Defendants received from Plaintiff the designation of Stephen R. Schuit as an expert witness in this case. Plaintiff does not dispute designating Mr. Schuit as an expert on December 27, 2004. Instead, he takes the position that he needed to designate an expert “after paper discovery and depositions so that my expert could consider and opine on matters that were likely to be evidenced by document production and those depositions.” Certification of David M. Hoffman, Esq., and Opposing Motion to Strike Designation of Expert Witness (Docket Item No. 27) at 2-3.¹

The Scheduling Order clearly and unambiguously required Plaintiff to designate expert witnesses by October 8, 2004. The responsibility for understanding the local rules of court and the significance of the Court’s orders rests on the shoulders of each party individually. Accordingly, it is **ORDERED** that Defendants’ Motion to Strike Plaintiff’s Designation of Expert Witness be, and it is hereby, **GRANTED**.

/s/ Gene Carter
GENE CARTER
United States Senior District Judge

Dated at Portland, Maine this 25th day of February, 2005.

¹ Plaintiff admits that Defendant declined to consent to a proposed application to the Court for a modified Scheduling Order, yet also submits that he was “suckered,” *see* Opposition to Motion to Strike at 4, and “sandbagged,” *id.* at 5, into believing that submission of expert reports by the December 27, 2004, discovery deadline would not be met by an objection. In support of this proposition, Plaintiff attaches six letters between counsel, which Plaintiff claims supports his claim of an agreed upon “stipulation” of a timing schedule. The Court notes that four of these letters are dated after the October 8, 2004, deadline for designation of expert witnesses, one letter makes no mention of expert witnesses, and the final letter, dated October 7, 2004, one day prior to the deadline, indicates that Plaintiff viewed the December 27, 2004, discovery deadline as the relevant date for designation of expert witnesses. *See* Letter from David M. Hoffman, Esq., to Louis B. Butterfield, Esq. (Oct. 7, 2004) (attached as Exhibit 7 to Certification of David M. Hoffman, Esq., and Opposing Motion to Strike Designation of Expert Witness (Docket Item No. 27) at 2 (“we should discuss a stipulation regarding expert reports and motions enabling us to meet the scheduling order’s December 27, 2004 and January 3, 2005 deadlines.”). Nothing in this correspondence persuasively suggests any basis to believe that responsibility for Plaintiff’s failure to timely designate an expert should rest anywhere other than with Plaintiff.

Plaintiff

ARNOLD HOFFMAN

represented by **SUMNER H. LIPMAN**
LIPMAN, KATZ & MCKEE
P.O. BOX 1051
AUGUSTA, ME 4332-1051
207-622-3711
Email:
slipman@lipmankatzmckee.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DAVID M. HOFFMAN
LAW OFFICE OF DAVID
HOFFMAN
15A NEW ENGLAND AVE.
P.O. BOX 554
SUMMIT, NJ 07901
Email: dhoffman@david-hoffman-
esq.com
ATTORNEY TO BE NOTICED

TRACIE L. ADAMSON
LIPMAN, KATZ & MCKEE
P.O. BOX 1051
AUGUSTA, ME 4332-1051
(207) 622-3711
Email:
tadamson@lipmankatzmckee.com
ATTORNEY TO BE NOTICED

V.

Defendant

**APPLICATORS SALES &
SERVICES INC**

represented by **KATE S. DEBEVOISE**
BERNSTEIN, SHUR, SAWYER,
& NELSON
100 MIDDLE STREET
P.O. BOX 9729
PORTLAND, ME 04104-5029
207-774-1200
Email: kdebevoise@bssn.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LOUIS B. BUTTERFIELD
BERNSTEIN, SHUR, SAWYER,
& NELSON
100 MIDDLE STREET
P.O. BOX 9729
PORTLAND, ME 04104-5029
207-774-1200
Email: lbutterfield@bssn.com
ATTORNEY TO BE NOTICED

Defendant

**PARADIGM WINDOW
SOLUTIONS**

represented by **KATE S. DEBEVOISE**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LOUIS B. BUTTERFIELD
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

ANDREW SEVIER

represented by **KATE S. DEBEVOISE**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LOUIS B. BUTTERFIELD
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

RICHARD ROBINOV

represented by **KATE S. DEBEVOISE**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LOUIS B. BUTTERFIELD
(See above for address)
ATTORNEY TO BE NOTICED